

VOL. XX.

TOMBSTONE COCHISE COUNTY ARIZONA SUNDAY, DECEMBER 8, 1901

No. 26

THE DECEMBER
TERM OF COURT

Full Report of Business Trans-
acted During Week

OF INTEREST TO PUBLIC.

Court order issued summoning 21
grand jurors, returnable Dec. 4.
The following cases were set and
called as follows:

Mason vs Crouch, 4th.
Williams et al vs Slaughter, 6th.
Costello vs Friedman, 4th.
Mack vs Costello, 4th.
Rally ad vs Carroll et al, 4th.
Norton vs Co vs McCaw, 6th.
Smith vs Smith, 16th.
O'Hare vs Overlook, 14th.
Old Terrible Mfg Co vs Gordon, 4th.
M. E. Co vs Hardy, continued.
Burns vs Burns, continued.
Barnaby vs Copper King, 5th.
Hostworth vs Bridge, dismissed.
Geiler vs Collins, dismissed.
Edley vs Edley, 5th.
Neleson vs Medigolia, 7th.
Costello vs Arizona Eastern Coal et al, 9th.
White vs Cochise County, 16th.
Gardner vs Gardner, 3d.
Turquoise Cop Co vs Cop Belle Co, 9.
Soto Bros vs Copper King Co, 7th.
Blackburn vs " " " 7th.
Cowan vs O'Brien, 19th.
McDonald vs McDonald, continued.
Warnock vs Cop Bullion Co, con.
Bequillas L&C Co vs Cartas et al, 17.
Pardo vs Pardon, 3rd.
Herrera vs Herrera, 4th.
Commonwealth Co vs Cochise Co, 5.
Copper Queen Co vs Cochise Co, 5th.
Maxfield vs Maxfield, 7th.
Walker vs Walker, 16th.
Mann vs Armstrong, 3d.
Latham vs Whaley, dismissed.
Crump vs Crump, 3d.
Renard vs Copper King, 7th.
Ford vs Ford, 16th.
Ter vs Morgan, 16th.
Ter vs Miller, dismissed.
Ter vs Pallas, dismissed.

Tippett vs Stamp et al—Set for
November 7th.
Gardner vs Gardner—Divorce granted
to plaintiff.

Braun vs Armstrong—Continue
for term.

Doyle vs County—Suit for res. Ten
days time granted to answer.

Old Terrible Mfg Co vs E P Gordon
et al—Quitting mining title; judgment
for plaintiff.

Reilly, adm vs J Isabelle Carroll et
al—Suit on canceled. Argued and
settled.

San Remo Co vs W D Pearce et al—
Continued for term.

Sawyer vs Sawyer—Divorce granted.
Mason vs Crouch—Ox trial.

Following is the return by the Sher-
iff of the grand jury, and were called
this afternoon:

GRAND JURY.

A Barnaby Steve Miller
B. Frankenberg M J Cunningham
F L Michael E B Mason
G H Vandewalker E G O D
Ben Henry Parks Whitney
B Maier John Critchley
Chas Blackburn W C Reed
Harry Clifford George Farrington
H M Gee Ben Cook
Chas Douglas Alex Smith
Wm Cowan

Following is the venire for the trial
jury to convene on the 9th inst:

TRIAL JURY.

W Allison Edgar Fletcher
G O Clawson C C Pinkney
W G Griffith Lewis Hunt
T J Lyon Aug Hickey
Ed Dunbar Jas Leeson
Wm Jones W E Bailey
W D Kinney Jesse Jackson
Gus Gitchalk G O Bernard
A L Armstrong Ed Brooks
H A H E C Doll
E G Adams Clinton Keller
J L Amstrong Jean Jolly
J A Lamb Chas H Hols
J W Blair G C Ballinger
J J Bowen Dan Housh

COURT NOTES.

The e were twenty-six prisoners in
the box upon the impeachment of the
jury.

A. Orsin was present as the repre-
sentative of Julian Cardenas.

O. Gibson was appointed by the
Court to represent all persons not
represented by counsel upon the im-
peachment of the grand jury.

A large number of spectators were
present at the afternoon session of the
court today.

Hon. Ben Goodrich, formerly a
prominent and well known attorney
of Tombstone, now of Los Angeles,
was shaking hands with his many old
friends at the court house today.

E. B. Mason, M. J. Cunningham,
G. H. Vandewalker, W. C. Reed and
Alex Smith excused from service as
grand jurors.

G. F. Cook was duly appointed as
Spanish interpreter.

Ben Henry was appointed foreman
of the grand jury and D. K. Wardwell
balliff.

Mason vs Crouch—Continued for
the term.

Costello vs Friedman—Case argued
and submitted; taken under advisement.

Judge Thomas Mitchell arrived from
Furcon last night to take part in the
tax cases.

At the opening of the court at 9:30
a. m. Judge Davis announced that the
tax cases would be taken up out of
their order; but, owing to this change,
the other cases would be taken up in
their order.

The coronari case of the Common-
wealth M. & M. Co. vs Cochise County
was first taken up. Judge McFarland
of Sulmonville was entered as counsel
for defendant. Messrs. Land,
clerk; attorney; English, Bowman
and Mr. F. Ives appeared for the county,
and Senator Ives appeared for the
plaintiff.

Plaintiff moved that an amended
return be sent up adding certain words
claimed to be material by plaintiff,
which were omitted from the regular
return. After argument the court
ordered the amendment to be made
as asked for in the motion. Clerk
Duncan brought in the original
assessment roll for 1901, and made the
correction required by the order.

The case was submitted then upon
the petition and return as amended.

Argument then proceeded, being
argued by Mr. Ives, who stated that
the only items to which plaintiff ob-
jected were the two, "Silver Wave
mining claim, \$200,000, five other
claims, \$70,000." The contention of
plaintiff was that the Board had no
jurisdiction to raise the valuation of
the foregoing property, for the reason
that no notice was given to the plain-
tiff except that given by the Board to
the effect that said Board proposed
"to raise the valuation of the Com-
monwealth mine \$1,000,000." Mr.
Ives argued that that notice gave the
Board no right to assess "five other
mining claims \$50,000," or any other
property than that mentioned in the
notice. He said the description, "five
other mining claims," was not such a
description as would enable the Ter-
ritory to make a good tax deed in case
of sale; although the description em-
ployed was that returned by the Com-
monwealth Company to the assessor.

M. Brockman appeared before the
Board on July 18. On July 20 the
Board made the raises complained of,
and plaintiff claimed no notice was
given of the raises actually made, be-
fore they were made, as they were
made two days after the hearing; and
no notice but that of final action was
given, other than the notice of propo-
sal to raise the "valuation of the
Commonwealth mine \$1,000,000."

Mr. Ives contended that the Board
had no right to add any property, but
it was its duty to instruct the as-
sessor to add any property not in-
cluded in the taxpayer's return.

In the amended return it was ad-
mitted that new property was added
by the board.

Objection was made by Mr. Ives

that the description "mining claims"
did not include mines; "mines" were
patented locations; claims were un-
patented locations. The property of
the Commonwealth mines are patent-
ed.

Judge McFarland opened the argu-
ment for the county. He contended
that when it is shown that the Board
of Equalization has jurisdiction, its
action was as conclusive as would be
the action of the district court acting
in a matter within its jurisdiction.
The only question he said was, "Did
the board act within its authority?"
The court could not substitute its
judgment for that of the board, to
which the law gives exclusive juris-
diction in tax matters. The function
of the court is only to correct errors
of jurisdiction. Appeal from the
action of the board not being given by
statute, there is no remedy by cer-
torari except where the board has
exceeded its jurisdiction. The court
asked whether the plaintiff had notice
of any proposed action other than
that mentioned in the notice. Mr.
McFarland contended that all matters
which could have been determined in
the hearing are res adjudicata, whether
as they were actually so deter-
mined or not. Ives before this
court is not what description would
pass a title, but whether the board
had the power to make the raises com-
plained of. Unless it affirmatively
appears from the return of the pro-
ceedings of the board, that it acted
without knowledge or evidence in
making said raises, their record is
conclusive that they acted upon
knowledge and evidence. No errors
within jurisdiction of the board can
be received on certiorari. Board was
not required to give notice concern-
ing any specific property, but only to
give notice that valuations would be
raised of the property listed by plain-
tiff. The Board of Equalization is
the only tribunal under the laws of
Arizona which has a right to pass on
the values of property in assessment
for taxes.

Attorney English follows in the
argument on behalf of the county and
was making argument as we go to
press.

When the PROSPECTOR went to press
yesterday afternoon the certiorari in
the case of the Commonwealth M. &
M. Co. was being argued, and the
afternoon proceedings follow:

After recess a Mr. English proceeded
with argument for the county. He
argued that the action should not
have been brought against the Board
of equalization, as it had adjourned
since die for the year before the suit
was brought; but the suit should have
been brought against the clerk, as he
continued in office the year around.
It is the duty of the taxpayer to fur-
nish a list of all his tax ble property
under oath. To contend that the
description furnished by the plaintiff
is inadequate, as does the plaintiff in
this case, is tantamount to saying that
plaintiff furnished to the assessor a
fraudulent list. Was the Silver Wave
added to the list? Plaintiff's manager
swore it had six mines in this county
subject to taxation. The appearance
of a party before a Board is a waiver
of all defects in the notice. Any no-
tice is sufficient to which the taxpayer
responds without objection. Plain-
tiff had an opportunity to appear at
the August meeting, and object to the
raises made on July 20, but did not do
so. Mr. English said it would be pre-
sumed that the Board acted only upon
the property listed to the assessor, and
did not add any property, in the ab-
sence of anything on the record show-
ing such addition.

The Board is not required to give a
better description than the taxpayer
returns to the assessor. Plaintiff
swore that the Silver Wave was a pat-
ented mine in the petition herein, and
it will be presumed that said claim
was included in the "six mining
claims" returned by the plaintiff to
the assessor. The hope was expressed
by Mr. English, in closing, that a de-
cision would be reached before taxes
became delinquent, as further compli-
cations would then arise.

Mr. Ives then took up the closing
for plaintiff. He said the C. M. & M.
Co. mines were assessed at \$250,000,
while all the mines of Yavapai county,
including the United Verde, were only
assessed at \$400,000; and that all the
mines of Pima county were assessed at
less than the Commonwealth mine.
He strongly intimated that the action
of the Board was arbitrary and one of
spite. He said no taxpayer had a
right to appear before the Board at
the August meeting, who had previ-
ously appeared before it in that
year. Where tribunals are clothed
with power from which there is no ap-
peal, such tribunal will be held to
strictest compliance with the statutes
elaboring them with such power. He
referred to the Board as the "Omni-
potent Board." He said they had
practically only assessed two mines in
the county, and intimated that the
Board was capricious, arbitrary, and
fraudulent and in excess of juris-
diction; and that those points might
be tested in a higher tribunal. At the
close of Mr. Ives' argument Judge
McFarland called the Court's attention
to one case which closed the argu-
ment. The case was then taken
under advisement by the Court.

All of the attorneys in the case
made able arguments.

Counsel for the county were given
until 9:30 this morning to prepare an
amended answer in the Copper Queen
tax case, at which hour that case was
taken up.

Court convened this morning at
9:30. As the certiorari case had not
been decided, the injunction case of the
Commonwealth M. & M. Co. vs.
Cochise County could not proceed.

The Copper Queen Co. vs Co-
chise County was called. Defendant
asked for one day more in which to
prepare an answer to the amended
complaint of plaintiff. Defendant
was given until 2 o'clock this after-
noon to prepare and file an answer to
the amended complaint.

COURT NOTES.

The grand jury made a partial re-
port at 10 a. m.

A. Barnaby was reported excused
by the grand jury.

Several charges were ignored, among
them that of Julian Cardenas, who
was discharged and his bail exonerated.

Ben Williams, formerly superin-
tendent of the Copper Queen Com-
Mines Company, was in attendance
upon court this morning as an inter-
ested party in the case of L. Williams
et al vs J. H. Slaughter.

Costello vs Friedman, continued
for term.

Costello vs Arizona Eastern &
Mont. Co. et al., continued for term.

Grand jury returned partial re-
port with following indictments:
J. N. Johnson, assault with intent to
commit murder; Sidney Johnson
robbery; Apollinar Rodriguez, rob-
bery.

The following cases were thus far
ignored: Jas Norton, Pedro Marino,
Miguel D. Delapena, Henry Finch,
Julius Cardenas.

Cases against Wohlschlagger and
Fennel referred to next grand jury.

The PROSPECTOR's complete court re-
port will no doubt prove interesting,
reading for the citizens and taxpayers
of Cochise county. The tax cases
have been given precedence, and the
Commonwealth M. & M. Co. vs.
Cochise County now occupies the atten-
tion of the court on a writ of certiorari,
which is merely a writ of review. An
injunction has been taken out restrain-
ing the defendant from collecting
certain tax moneys from the plaintiff,
which under the law must be paid in
before the plaintiff is eligible before
the law. The injunction will proba-
bly be argued tomorrow.

After this case has been disposed
of the Copper Queen tax case, some-
what similar. The decisions will be of
vital interest to every section of Ariz-
ona and will serve to guide the ac-
tions of other Boards that may have
to act upon similar cases.

PASSED US BY
UNNOTICED

The President Failed to Recom-
mend Statehood.

WE WILL HAVE TO WAIT.

The general public will no doubt
be somewhat surprised to learn that
President Roosevelt failed to mention
the matter of statehood for the terri-
tories. Those directly interested had
allowed themselves to believe that, as
the president is regarded to be fair and
impartial, he would recommend the
admission of Arizona, New Mexico
and Oklahoma to the sisterhood of
states. All of the applicants have
the requisite population; but one who
can defend the trusts can no doubt be
swayed in wrong-doing with the hope
of perpetuating the trusts in power
and strengthening the possibility of
his succession to office. Arizona is
and will continue to be democratic;
New Mexico is doubtful, with a strong
leaning toward Jeffersonian principles,
while Oklahoma is republican. There
is a strong inclination on the part of
the dominant party to bestow state-
hood upon Oklahoma, but to do so
without admitting Arizona and New
Mexico would appear so palpably un-
just that the most ardent supporters
of the greedy proposition have failed
to publicly advocate so flagrant an
outrage.

However, Delegate Smith will soon
present a bill to congress providing
for the admission of Arizona as a state.
There is little hope of the bill reciev-
ing the recognition that it deserves,
but its defeat will be the means of
showing up those in their true light
who publicly advocate one thing and
privately use their power to defeat the
object. Nevertheless Arizona will
continue to be democratic, statehood
or no statehood.

OUR FAIRBANK
CORRESPONDENCE

Interesting Items From the
Railroad Town.

GENERAL AND PERSONAL.

FAIRBANK, December 5, 1901.

Col. Frank Morgan of the Mexican
mine, Sonora, returned from Nogales
yesterday on his way home. The col-
onel reports everything in a flourish-
ing condition down his way.

The rock-train crew spent Sunday
distributing gravel from the granite
quarry below town, along the main
line.

The Southern Pacific company is
using gravel instead of lumber around
its depots and station houses, which
gives better satisfaction.

Wm. Williams, Benson's popular
peace officer, spent Tuesday night in
the city on his way home. The hobo
season has come, and Bill is kept
busy showing them the many different
routes out of town. His method is
all right, as it is no expense to the
county.

E. S. De Golyer spent Tuesday
examining the famous Gallen and
London copper mines, in the Whet-
stone mountains. He left for the
east yesterday morning.

A band of pianos who have been
working for Ross & Co. went out on
strike. However, the works did not
close, as the men were replaced in a
short while.

Neilsen's construction crew leaves
for Patagonia in a few days to build
up some work there.

OFFICIAL COUNTY
PROCEEDINGS

Minutes of the Board of Super-
visors, Cochise County

AN AUTHENTIC REPORT.

TOMBSTONE, Dec. 3, 1901.

Board met pursuant to adjourn-
ment of meeting of Dec. 23, at 10
a. m.

Members present—Thomas R.
York, chairman, P. J. Delahanty
and Geo. B. Ray.

Minutes of meeting Dec. 2nd, 1901,
read and approved.

Communication from B. F. Gar-
ham read in regard to obstructions on
certain road in Bi-bee.

Communication and affidavit of
P. B. Soto in regard to Florentine
Vazquez, being an indigent and ask-
ing aid from the county for her sup-
port. It is hereby ordered all mem-
bers voting aye, that Florentine Vaz-
quez be allowed \$7.50 in merchandise
to be had from S. to Bros.

The appointment of E. P. Ellis as
deputy constable, Precinct No. 10
read and appointment approved.

The appointment of Dayton Gra-
ham as deputy constable, Precinct
No. 2, read and taken under advisement.

The appointment of C. N. Thomas,
deputy constable of Precinct No. 2,
read and taken under advisement.

Applications presented to purchase
mining property by A. M. Ennausel,
Academy mine; George Cheyney, San
Pedro mine; W. P. Beck, Longfellow
mine.

At 12 m. board stands at recess to
2 p. m.

2 p. m. board met pursuant to ad-
journment for recess.

Some members present.

Clerk instructed to notify treasurer
to cancel the assessment of Fred Stoen-
as it is a double assessment, the
property belongs and is assessed to
John Twomey.

Clerk instructed to notify A. Redus
that the board can do nothing until
James F. Wanson pays his taxes on
the personal property.

Clerk instructed to notify the treas-
urer to cancel the assessments and
taxes, whereof, of Mrs. P. W. Smith,
Don Cabanas.

Notice of withdrawal of H. Clifford
off of the bond of W. D. Monmonier,
read. Clerk instructed to notify W. D.
Monmonier to file new bond.

Petition of citizens for the appoint-
ment of W. J. Benson, road overseer
of Huachuca district. Board after
consideration concluded to make no
appointment.

At 4:15 p. m. board stands ad-
journed to December 4th, 1901, at
10:20 a. m.

THOMAS R. YORK,
Jas. F. FUSCOM, Chairman.
Clerk.

Frank Senead was found in a bad
condition in Nogales. He could give
no coherent account of himself except
that he had gone to bed the night be-
fore in Bi-bee. Take only shows how
swift the southern part of the terri-
tory is becoming. If you don't brace
yourself with the motion down there
you are liable to get jerked over into
the next county.—Arizona Democrat

There has been filed in the office of
Secretary Stoddard articles of incor-
poration which bears the honored
name of "The McKinley Mining and
Smelting Co." This company is or-
ganized by M. C. Barber and Austin
Lynch of Canton, Ohio, and promi-
nent citizens of Elmira, New York.
These mines are situated in Nevada,
and the principle owners are, Mrs.
McKinley, the wife of our late be-
loved president and by her sister, Mrs.
Barber. It is believed the property
is a very valuable one, and every
friend of our late president will hope
they may prove a bonanza.—Constit.

From Thursdays Daily

The PROSPECTOR's supplement con-
taining the president's message in full
was in the hands of its Bi-bee readers
in advance of other papers. The Re-
view, however, is at liberty to copy it
tomorrow. The message is not copy-
righted.

A musical entertainment and a two-
act drama, entitled, "The Last Leaf,"
will be given at Shieffelin hall, on
Friday, December 13th, inst., for the
benefit of the Catholic church. The
drama and the music will be rendered
by local talent only and will be under
the direction of Mrs. N. E. Carson

R. H. Stanton, a member of G.
troop of Roosevelt's Rough Riders,
who saw service in Cuba and after-
wards in the Philippines, has resigned
his position as one of Museum's
rangers and will leave in a few days
for Phoenix. After a short rest
Mr. Stanton will go to Yuma, where
he has secured a position as one of
the prison guards.—Bi-bee Review.

From Friday's Daily:

No western letter mail arrived to-
day, and but little paper mail was re-
ceived.

Mr. and Mrs. J. H. Slaughter came
in today from San Bernardino ranch
and will remain several days. Mr.
Slaughter is here on court business.

Mr. W. J. Bryan must be given
credit for originating the "publicity"
policy which President Roosevelt
pursues in his message as being the
proper way to handle the trusts.

An injunction case from Pima
county was tried before Judge Davis
in chambers today and was continued
to December 28th at Tucson. The
case was Lake vs. Fish, and involves
a dispute of the Cuprite mines, near
Helvetic.

Messrs. Cox and Sawyer are at
present engaged in doing a assess-
ment work on their claims on the east
side of Middle Pass, and some very fine
rock is being extracted.

The Appeal to Reason, a publi-
cation devoted to economic, with a
paid up subscription list of 170,000,
has been denied newspaper postal
rates by the Washington authorities.
This is the most effective way to stop
the showing up of trust schemers we
have yet seen. The Commoner and
Heart papers had better look a little
nearer.

Now is the time when all persons
owning mining property should see
to it that their assessment work for
the year is done. Mines that the
owners fail to do their complete work
on stand a good show of being
jumped the first of the year. There
is always a bunch of jumpers on
the look out for snags. It is not
likely this year will be an exception.

The song books ordered for the
Methodist church have arrived, and
as both pastors are absent, a song
service will be held Sunday evening
at 7:15 at the Methodist church after
the plan of an Epworth League
meeting. This meeting will be pre-
liminary to the organization of a
league. Everybody is invited, but
especially the young people. A good
attendance is desired at Sunday
school at 2 p. m., in order to learn
some of the songs in the new book.

Someone has explained the signifi-
cance of the editorial "we." It may
have a variety of meanings. For ex-
ample when you read "We expect our
wife home today," "we" refers to the
editor, "we are a little late with our
work," includes the whole office force,
even the devil and the towel; in "we
are having a boom" the town is meant;
"we rec-ived over 1,000,000 emigrants
last year," embraces the nation; but
"we have hog cholera in our midst,"
means that the man who takes our
paper and does not pay for it, is ill.